

BEFORE
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NOS. 2010-14 --19-C

IN RE:)

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v.)
Affordable Phone Services, Incorporated)
d/b/a High Tech Communications)
Docket No. 2010-14-C)

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v. Dialtone)
& More Incorporated)
Docket No. 2010-15-C)

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v.)
Tennessee Telephone Service, LLC)
d/b/a Freedom Communications USA,)
LLC)
Docket No. 2010-16-C)

**ALTERNATIVE PROPOSED ORDER OF
RESELLERS**

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v. OneTone)
Telecom, Incorporated)
Docket No. 2010-17-C)

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v. dPi)
Teleconnect, LLC)
Docket No. 2010-18-C)

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BellSouth Telecommunications,)
Incorporated d/b/a AT&T Southeast)
d/b/a AT&T South Carolina v. Image)
Access, Incorporated d/b/a New Phone)
Docket No. 2010-19-C)

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Complaints ("Complaints") filed by BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina "AT&T" against Affordable Phone Services, Incorporated d/b/a High Tech Communications, Dialtone & More, Incorporated, Tennessee Telephone Service, LLC d/b/a Freedom Telecommunications USA, LLC, OneTone Telecom, Incorporated, dPi Teleconnect, LLC and Image Access, Inc. d/b/a NewPhone (the "Resellers"). In these Complaints, AT&T alleges, among other things, that the individual Resellers owe amounts relating to certain promotional offerings which AT&T offers to its end-use customers.

On January 20, 2010, the Commission consolidated the above-referenced dockets for hearing purposes. Pursuant to the parties' Joint Motion on Procedural Issues filed May 20, 2010, as granted by Commission Hearing Officer Directive dated August 20, 2010, the above-referenced dockets were consolidated for hearing purposes for the limited purpose of addressing the following common issues (the "Consolidated Phase"): (1) how cash back credits to Resellers should be calculated; (2) whether the word-of-mouth promotions are available for resale, and if so, how the credits to Resellers should be calculated; and (3) how credits to Resellers for waiver of the line connection charge should be calculated. The parties jointly filed Stipulations for the Consolidated Phase on July 23, 2010 ("Stipulations"). AT&T and the Resellers filed direct and rebuttal testimony in the Consolidated Phase.

A hearing was held on December 16, 2010, at 10:30am in the Commission's Hearing Room, with the Honorable John E. "Butch" Howard, Chairman, presiding. AT&T was represented by Patrick Turner, Esquire, and presented the direct and rebuttal testimony of Dr.

William Taylor. The Resellers were represented by John J. Pringle, Jr., Henry Walker, Christopher Malish, and Paul F. Guarisco, and presented the direct and rebuttal testimony of Joseph Gillan and Dr. Christopher Klein.

II. FACTS

A. Stipulated Facts

There are three types of promotions that are being considered by the Commission in the Consolidated Phase: Cashback Offerings, Referral Marketing ("Word-of-Mouth"), and Line Connection Charge Waiver ("LCCW").

As set out in the Stipulations submitted to the Commission and incorporated by reference herein, the parties have no disagreement regarding either the general description of the representative types of promotions that constitute Cash-back Offerings, Word-of-Mouth, and LCCW, or the general description of the representative types of AT&T retail offerings subject to those promotions. As described in the Stipulations and below, the parties agree on how AT&T implements these promotions for both its own retail customers and on a wholesale basis to qualifying resellers.

B. Additional Findings of Fact

The Resellers resell AT&T's retail residential telephone services. AT&T often offers its retail customers promotional discounts and rebates which AT&T is required to make available to Resellers. The dispute centers on credits which are owed to the Resellers as a result of the Resellers purchasing these promotional offerings from AT&T.

The Act¹ and federal regulations (particularly 47 C.F.R. § 51.607) set the resale rate for telecommunications services that an ILEC may charge at "the rate for the telecommunications service, less avoided retail costs, as described in section 51.609."² Thus, the "wholesale discount" must by law be calculated as the avoided cost.

The Commission has set BellSouth/AT&T's avoided costs in the wholesale context at a percentage of the standard retail price of the respective telecommunications service. When originally determined by this Commission, the avoided cost was based on, and calculated from, BellSouth/AT&T's pre-promotion (or standard/tariffed) retail rate. This is considered a reasonable approximation by all parties.¹

The cash back promotions at issue in this case are described in the joint stipulation. A customer who purchases a service at the promotion rate must first pay the regular, retail rate for the service and then apply for the cash refund. To be eligible for the refund, the customer must retain the service for thirty days. He is then entitled to the cash back award which is paid in a lump sum.

The parties have proposed three methods for calculating the credit paid to Resellers when cash-back promotions are involved. The Resellers suggest two methods, one proposed by Mr. Gillan and one proposed by Dr. Klein. Under both methods, the Reseller pays the regular,

¹ 47 U.S.C. § 252(d)(3): Wholesale prices for telecommunications services

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

² "Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier." 47 C.F.R. § 51.609(b). Further, "the amount of avoided retail costs shall be determined on the basis of a cost study...." 47 C.F.R. § 51.609(a).

¹ Deposition of William E. Taylor, Ph.D., October 21, 2010, p. 22, 27

wholesale rate to AT&T and then applies for and, if qualified, receives the same \$50 rebate that a qualified retail customer would receive.

AT&T, in contrast, proposes that the Reseller receive a rebate of \$40 (assuming a wholesale discount of 20%) instead of \$50. AT&T calculates this amount by assuming that a cash back rebate should be treated the same as a \$50 discount in the retail price. When the discount is subtracted from the retail price, the result is the "effective retail rate" paid by retail customer. To calculate the wholesale price, AT&T then multiplies the "effective retail rate" times the wholesale percentage discount and subtracts that amount from the effective retail rate. In other words, if the retail rate is \$75 and the cash back amount is \$50, the "effective retail rate" is \$25 and, assuming a wholesale discount of 20%, the "promotional" wholesale rate would be \$20 (which is \$40 less than the "normal" wholesale price of \$60.) Under the AT&T approach, however, when the "effective retail rate" is less than zero, the resulting wholesale rate is higher than, not less than, the effective retail rate. If, for example, the retail price is \$75 and the cash back amount is \$100, the effective retail rate is (-\$25). Under AT&T's approach, the company multiplies (-\$25) times the wholesale discount of 20% which produces avoided costs of (-\$5.00). AT&T then subtracts (-\$5.00) from (-\$25.00) to arrive at a wholesale price of (-\$20.00) which is \$5.00 higher than the (-\$25.00) retail price. This anomaly, which only occurs when effective retail rate is less than zero, was the main focus of the Resellers' attack on the AT&T approach.

III. STIPULATED ISSUES

As described in the Stipulations and the parties' Joint Motion on Procedural Issues, the following issues are disputed and have been placed before the Commission in the Consolidated Phase:

(1) How should Cashback Offering and LCCW credits to Resellers be calculated?

Because the parties have asked the Commission to assume that a Reseller is entitled to receive these promotional credits, the only dispute between AT&T and the Resellers is the amount of the credits.

(2) Word-of-Mouth

a) Is the Word-of-Mouth promotion subject to the resale obligations of the federal Telecommunications Act of 1996 (the "Act") and other applicable law?

b) If the Commission determines that the Word-of-Mouth promotion is subject to such resale obligations, and assuming that a Reseller is entitled to receive a promotional credit, how should that credit be calculated? In other words, what is the amount of that credit?

IV. LEGAL STANDARDS UNDER THE FEDERAL TELECOMMUNICATIONS ACT

Federal law provides, among other things, the following with respect to the terms and condition of resale, including the obligation to make promotions available to resellers:

- 47 U.S.C. § 251(c)(4)(A). ILECs have the duty to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."
- 47 C.F.R. § 51.605(a). ILECs "shall *offer* to any requesting telecommunications carrier any telecommunications service that the [ILEC] *offers* on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates...." [Emphasis added.]
- 47 U.S.C. § 251(c)(4)(B). ILECs have a duty not to "prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service."
- 47 C.F.R. § 51.603(b). "A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, *subject to the same conditions*, and provided within the same provisioning time intervals that

the LEC provides these services to others, including end users." [Emphasis added.]

- 47 C.F.R. § 51.613(a)(2). "The following types of restrictions on resale may be imposed: Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:
 - (i) Such promotions involve rates that will be in effect for no more than 90 days; and
 - (ii) The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates."

Federal law also provides the following with respect to calculating the wholesale price of retail services which must be resold:

- 47 U.S.C. § 252(d)(3). "Wholesale prices for telecommunications services. For the purposes of section 251(c)(4) of this title, a State commission shall determine *wholesale* rates on the basis of *retail* rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided* by the local exchange carrier." [Emphasis added.]
- 47 C.F.R. § 51.607. "The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, *less avoided retail costs*, as described in section 51.609." [Emphasis added.]

The Commission has determined that AT&T's avoided retail costs equal 14.8 % of the retail price. Order on Arbitration, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc.*, Order No. 97-189 in Docket No. 96-358-C (March 10, 1997). Accordingly, the "avoided cost discount" or "resale discount" is 14.8%.

V. DISCUSSION

The resale discount of 14.8 % was established by the Commission in 1997, and has been applied continuously since that time. We emphasize that we have not been presented with any proposal to change that avoided cost discount, and our decisions in the Consolidated Phase will not alter that avoided cost discount in any way. In this Consolidated Phase, the Commission determines how the resale discount is applied to calculate the wholesale rate for the Cash Back and Line Connection Charge Waiver promotions, which are required to be made available for resale, to determine the credits due Resellers. Further, the Commission will consider whether the Word-of-Mouth promotion is available for resale, and if so, how should the credit due Resellers should be calculated.

A. The Proper Calculation of Credits Associated with Cash-Back Promotions to Resellers

Background

The parties have no fundamental disagreement in defining a "cash-back" promotion. Reseller witness Gillan defines a cash-back promotion as "a category of promotion where a cash payment, gift card, coupon, checks or other similar giveaways are offered as part of a particular promotion." Tr. p. 196. AT&T witness Taylor defines a cash-back promotion as "an offer that provides a one-time cash or near-cash incentive for customers to subscribe to a service. It often takes the form of a coupon to be mailed back or an online redemption process." Tr. p. 53.

The parties have further stipulated the procedures through which AT&T processes a request for a promotional offering:

AT&T's Procedure for Processing a Retail Request for a Promotional Offering

AT&T bills its retail customer the standard retail price for the services subject to the "cash-back" offering. The AT&T retail customer then requests the benefits of the cash-back promotion either on-line or by mailing in a form within the allowable time period set by the terms and conditions of that particular promotion. If the retail customer meets the qualifications of the promotional offering, AT&T mails a check, gift card, or other item (as may be described in the promotional offering) to the retail customer's billing address.

AT&T's Procedure for Processing a Wholesale Request for a Promotional Offering

When a Reseller purchases for resale the telecommunications services that are subject to promotional offerings described above, AT&T bills the Reseller the wholesale rate (the retail rate less the 14.8% resale discount) for those services. After being billed by AT&T, the Reseller submits promotional credit requests seeking any credits to which it claims entitlement. To the extent that AT&T determines that the Reseller is entitled to the requested credits, AT&T applies those credits on a subsequent bill to the Reseller.

Proposals/Positions of the Parties

Resellers

The Resellers propose that AT&T 1) bill the monthly retail price of the service less the 14.8 % resale discount; and 2) provide the Resellers a one-time bill credit in the same amount of the retail cash-back amount. Tr. p. 203.

AT&T

As described by AT&T witness Dr. Taylor, AT&T's proposed method is to 1) bill the Reseller the monthly retail price of the service less the 14.8 % resale discount; and 2) provide the

Reseller a one-time bill credit in the amount of the retail cash-back amount less the 14.8 % resale discount. Tr. p. 53. The AT&T proposal is demonstrated by the following equation:

$$\text{Wholesale Rate} = (\text{Discount}) \times (\text{Retail Rate}) - (\text{Discount}) \times (\text{Cash-Back})$$

As previously discussed, the AT&T approach results in a wholesale price which is greater than, not less than, the retail price when the "effective retail rate" (i.e. the retail price less the cash rebate) is below zero.

Discussion

Section 252(d)(3) of the Act states:

Wholesale prices for telecommunications services. For the purposes of section 251(c)(4) of this title, a State commission shall determine *wholesale* rates on the basis of *retail* rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided* by the local exchange carrier. [Emphasis added.]

47 C.F.R. § 51.607 states:

The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, *less avoided retail costs*, as described in Section 51.609.

As the Act and FCC rules make clear, the resale rate for telecommunications services that an ILEC may charge is "the rate for the telecommunications service, less avoided retail costs, as described in section 51.609."² Second, it is clear from context that the FTA and the rules promulgated thereunder expect that the *wholesale price should be less than the retail price*.

² "Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier." 47 C.F.R. § 51.609(b). Further, "the amount of avoided retail costs shall be determined on the basis of a cost study...." 47 C.F.R. § 51.609(a).

AT&T's witness Dr. Taylor concedes that the Act and the FCC's rules presume that the wholesale price must be less than the retail price.³

As previously discussed, AT&T's proposal results in instances where the wholesale rate is actually higher than the retail rate. Accordingly, AT&T's model cannot be correct. It is not possible to comply with the federal wholesale pricing standard with a wholesale price that is *greater* than the retail rate. There is no such thing as a "negative avoided cost;" as conceded by Dr. Taylor, the retail price of a telecommunications service is never negative.⁴

As explained by Reseller witness Gillan:

[T]he purpose of the wholesale discount is to *remove* marketing and customer-care costs from a retail price so that the wholesale price is lower than the retail price (by the estimate of avoided cost). This requirement is *fully* accomplished when the discount is applied to the retail rate (which is the first term of the equation); there is no continuing role for the wholesale discount in the calculation. Once applied to the retail rate, the proper estimate of the avoided cost is removed and the full purpose of the wholesale discount is achieved.

AT&T's calculation is the perfect example of an algebraic equation disconnected from reality. The way AT&T applies the discount [to both the retail rate and promotion], it is artificially reducing the avoided-cost estimate, as though there are negative avoided costs that can be "added-back" to the calculation. But there is no such thing as a "negative avoided cost." Significantly, there is nothing in AT&T's testimony that tries to explain what changed during the promotional month that would justify AT&T removing fewer avoided costs in that month than in every other month for the same service.⁵

³ Transcript of Testimony and Proceedings, p. 129, lines 5 – 14, *e.g.*:

MR. GUARISCO: And there's a discussion at the bottom of page 12 and into page 13 with regard to the overarching principles involved in the resale obligations of the [federal Telecommunications] Act [of 1996] and that the resale price to the CLECs would be less than the retail price of the ILEC?

MR. TAYLOR: Yes.

MR. GUARISCO: Do you see that at the bottom of page 12?

MR. TAYLOR: Right. My answer is that's certainly the expectation of the Act, because the Act and the FCC never contemplate that a price would be negative.

⁴ Transcript of Testimony and Proceedings, pp. 123 – 124.

⁵ Gillan Rebuttal Testimony, p. 10, lines 4 – 19.

The *Sanford* Case

The parties have provided the Commission with their positions on the effect and import of *BellSouth Telecommunications Incorporated v. Sanford*, 494 F.3d 439 (4th Cir. 2007) ("*Sanford*"). *Sanford* involved the Fourth Circuit Court of Appeals' review of two orders of the North Carolina Utilities Commission ("NCUC") determining that BellSouth Telecommunications, Inc. ("BellSouth") was required to offer certain promotional offers it provided to its retail customers to resellers. BellSouth challenged the NCUC orders in federal district court on the basis that requiring BellSouth to provide those incentive offers for resale violated the Act and the FCC Rules. The district court reversed the NCUC, and the Fourth Circuit determined that the district court "erred in concluding that the NC Commission's orders violated the Telecommunications Act, the regulations promulgated under it, and the FCC's Local Competition Order." *Sanford*, 494 F.3d at 453.

The core holding of *Sanford* is that if an ILEC offers a promotion that tends to affect the retail price of a service, it must be offered in turn to CLECs. While the *Sanford* court was not concerned with setting the wholesale prices of promotional offerings, *Sanford* does make it clear that the wholesale rate must be lower than retail price to give effect to the Act and federal regulations.

Although the Act permits individual states to arrive at "differing results" in ruling on these resale issues, as long as the results are consistent with the purpose of the Act (*Budget Prepay Inc., et al. v. AT&T Corporation*, 806 F3d 273 (5th Circuit, 2010)), this Commission finds that the formula set forth by the *Sanford* court provides instructive guidance. There, the Court affirmed the decision of the North Carolina Commission holding that a service offered at a promotional rate must be offered for resale at the "effective retail rate" less the avoided retail

costs. The North Carolina Commission determined the "avoided retail costs" as a percentage of the retail rate and applied that percentage to the "effective retail rate" to determine the appropriate wholesale rate for the promotional service. This Commission will do the same. For example, if the retail price is \$75 and the rebate is \$50, the "effective retail price" under the North Carolina formula is \$25 and the wholesale rate is \$20 (assuming a 20% discount). That is the same result advocated by AT&T and the Commission finds that this result is consistent with the Act and its competitive purposes.

The Commission finds that these same principles should be followed when the "effective retail rate" is less than zero. If the retail price is \$75 and the rebate is \$100, the "effective retail rate" is (-\$25). That amount must be reduced by the avoided retail costs. In this example, the avoided costs are \$5.00 (assuming a 20% discount). That amount is deducted from the effective retail rate to produce a wholesale price of (-\$30.00).

Under AT&T's approach, the \$5.00 of avoided costs are added to the effective retail rate to arrive at a wholesale price of (-\$20.00), five dollars higher than the retail price. Such a result is clearly not consistent with the FCC's rules or competitive purposes of the Act. Furthermore, because AT&T's witness acknowledged that there is no such thing as "negative avoided costs," AT&T's formula must be adjusted accordingly so that there are no negative avoided costs. In other words, the dollars "avoided" must be deducted from the retail price to arrive at the correct wholesale price. No other approach makes sense. The Commission therefore adopts the North Carolina approach, as affirmed in *Sanford*, and holds that the correct wholesale price is the "effective retail rate" (retail rate less the cash rebate) less the wholesale discount.⁶

⁶ This approach, which adopts the AT&T methodology but corrects it so that the resulting wholesale rate is always less than the retail rate by the amount of the wholesale discount, is the same compromise approach recently

Additional AT&T Arguments in Support of its Proposal

AT&T presents various arguments that the Reseller proposal is inconsistent with the competitive purposes of the Act. These include the allegations that the end-user customer of the Resellers may not receive the benefit of the cash-back promotion (Tr. at p. 63), that Resellers may not compete on price with AT&T (Tr. at p. 107), and that Reseller end-user customer "churn" may be significant (Tr. at p. 112). The Commission determines that the business practices, rates, and terms of service of individual resellers are dictated by competitive market forces. As requested by the parties in their Joint Motion on procedural issues, the purpose of this proceeding is to resolve ongoing billing disputes between AT&T and a number of different resellers and to arrive at a conclusion which can be applied to all carriers who resell these promotions.

B. The Word-of-Mouth Promotion

1. Availability for Resale

The Word-of-Mouth promotion allows an AT&T customer to receive a \$50 rebate for referring a new customer to AT&T. The benefit to AT&T is no different than when a new customer signs up for AT&T service and receives a \$50 cash rebate directly from AT&T.

As a result of the *Sanford* decision, AT&T is required to offer the Resellers the benefit of a \$50 cash back promotion, but AT&T unreasonably refuses to offer the Resellers the benefit of the \$50 Referral promotion. The *Sanford* court rejected AT&T's argument that promotional offerings were not subject to the resale discount. AT&T now repeats that argument, attempting

recommended by the Staff of the Louisiana Public Service Commission. At this time, Louisiana is the only other state where these issues have been heard and briefed. See "Consolidated Proceeding to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31254, and U-31260 "Louisiana Public Service Commission, "Staff's Post Hearing Brief," filed February 9, 2011. LPSC Consolidated Docket No. U-31364.

to apply it to the Word-of-Mouth. Legally and logically, the two promotions are exactly the same. In both cases, AT&T offers a \$50 rebate in exchange for gaining a new customer. In one case, the money is paid to the new customer himself. In the other case, the rebate is paid to an existing AT&T customer who persuades someone else to purchase AT&T's service. There is no reason that one promotion is available for resale and the other is not. AT&T is simply trying to limit the application of *Sanford* to promotions which are expressly described in the Court's opinion and not apply the Court's holding to other, very similar promotions.

Dr. Taylor attempts to argue that the Referral promotion is a "marketing expense" for AT&T and therefore that this promotion is not subject to the Act's resale provisions. This is exactly the same argument that AT&T made – and lost – in the *Sanford* case. This promotion is a condition of service, subject to the Act's resale obligations to the same extent as provided to retail customers. As correctly pointed out by Reseller witness Dr. Christopher Klein:

The Word-of-Mouth referral is just a rebate for which a customer must qualify by referring another customer to AT&T. FCC rules require rebates to be available for resale.... Dr. Taylor's objections to the resale of this offering are just attempts to obscure the simplicity of the rebate or to complicate the analysis by referring to the rebate as a marketing expense. AT&T's classification of the rebate for its own internal purposes is irrelevant. The Word-of-Mouth referral rebate is offered to AT&T customers as a term or condition of service and should be made available for resale. Otherwise, AT&T is evading its resale obligations.⁷

As such, this promotion is subject to the same resale obligation as cash back and LCCW promotions. AT&T must offer the full value of the word-of-mouth promotion to the Resellers.

2. Calculation of the Wholesale Price.

⁷ Klein Rebuttal Testimony, p. 13, lines 2 – 11.

The calculation of the wholesale price should be done using the same methodology the Commission has adopted for calculation of the wholesale price of a "cash back" promotional offering.

B. The Proper Calculation of Credits to Resellers for the Line Connection Charge Waiver

Similar to the cash back promotion fully discussed herein, AT&T also offers a line connection charge waiver ("LCCW") promotion to its end-users. As explained by Reseller witness Dr. Christopher Klein:

The LCCW waives the line connection charge for select customers. Those customers are not charged for and do not pay the connection charge. The Stipulations describe the resale of the LCCW as requiring the reseller to pay the standard wholesale rate up front, then to apply for the waiver. If the reseller's customer qualifies for the LCCW, then the reseller receives a credit. From the reseller's perspective, the LCCW also functions as a rebate. Dr. Taylor makes the same point in likening the LCCW to a cash back offer.⁸

In other words, the LCCW promotion takes the same form as the cash back promotion as it applies to resellers. As AT&T's witness Dr. William Taylor agreed, the cash back arguments described in the testimony of Mr. Joseph Gillan and Dr. Christopher Klein are equally applicable to the calculation of the LCCW amount. As Dr. Taylor stated in his pre-filed testimony:

Alternatively, one could treat the \$40 LCCW as a cashback promotion because the value of that promotion is relatively unambiguous (the \$40 the retail customer saves) and all customers are likely to value that benefit similarly – like cash.⁹

The Commission reaffirms its previous discussion that the wholesale rate should be calculated as the "effective retail rate" less the avoided costs calculated as a percentage amount.

⁸ Klein Rebuttal Testimony, p. 7, lines 5 – 10.

⁹ Taylor Direct Testimony, p. 31, lines 10 – 12.

Here, as AT&T correctly argues, the "effective retail rate" is \$0.00 and, therefore, the avoided costs are also \$0.00. Therefore, the wholesale rate should also be \$0.00.

V. CONCLUSION

The Commission concludes that (1) cash back promotions should be calculated as advocated by AT&T but with the correction recommended by the Resellers so that the resulting wholesale rate is always less than the effective retail rate by the amount of the avoided cost percentage discount, (2) the WOM promotion should be available for resale and the wholesale price calculated in the same manner as the cash back promotion, and (3) the Line Connection Waiver Charge should also be calculated consistent with the "cash back" promotion so that if the "effective retail rate" is \$0.00, and the "avoided costs" are \$0.00, then the wholesale price is also \$0.00.

IT IS THEREFORE ORDERED THAT:

1. AT&T shall calculate credits for the Cash-Back promotions using the AT&T method but corrected as method described herein.
2. AT&T shall make the Word-of-Mouth referral promotion available for resale as described herein.
3. AT&T shall calculate credits for the Word-of-Mouth Promotion using the same method as the Commission has ordered for the Cash Back Promotion.
4. AT&T shall calculate credits for the Line Connection Charge Waiver promotion as the Commission has ordered for the Cash-Back promotion.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David A. Wright, Vice Chairman

(SEAL)